

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GERTRUDE CAMPBELL and U.S. POSTAL SERVICE,
POST OFFICE, Starkville, MS

*Docket No. 01-847; Submitted on the Record;
Issued November 13, 2001*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
PRISCILLA ANNE SCHWAB

The issues are: (1) whether appellant has established that she sustained an emotional condition while in the performance of duty; and (2) whether the refusal of the Office of Workers' Compensation Programs to reopen appellant's case for further reconsideration constituted an abuse of discretion.

On November 19, 1999 appellant, then a 56-year-old postmaster, filed an occupational disease claim alleging that she suffered from job-related stress, depression and anxiety due to acts of discrimination, harassment and retaliation by management.

On November 9, 1999 appellant alleged that she was mistreated, harassed and discriminated against by her supervisor, Hazel Sanford, and was forced to file Equal Employment Opportunity (EEO) complaints to protect herself. Specifically, appellant alleged that her work hour budget was cut more severely than the other 101 offices in Ms. Sanford's area, that Ms. Sanford never observed operations at appellant's post office and that she was required to submit specific documentation that other postmasters verified had not been requested of them. Appellant also alleged that the employing establishment conducted an unwarranted audit that maligned her character and violated her privacy, that Ms. Sanford issued her a notice of proposed letter of warning in lieu of a 14-day suspension for violating the code of ethical conduct and that she received an unacceptable merit rating for the fiscal year 1998 due to additional goals set at mid-year, which had not been originally planned.

Appellant also alleged that supervisors of the employing establishment sought to withhold \$4,638.32 from her salary for purported poor management of the post office, which it claimed resulted in financial losses. Appellant noted that she was released from financial liability under the provisions of the Debt Collection Act. She further alleged that she was involuntarily assigned to another work location.

In response to appellant's allegations, Ms. Sanford initially explained that the Starkville post office where appellant worked had unusually large suspense accounts, which represented outstanding funds that needed to be collected. Ms. Sanford stated that when she discussed the situation with appellant, she did not seem very concerned about clearing up the problem. Ms. Stark indicated that appellant claimed that she lacked training and, as a result, was scheduled for various training classes including a week-long training program in May 1998.

Ms. Sanford indicated that the audit by postal inspectors was based on data indicating problems with appellant's office and that these audits were routinely conducted in all offices in her area. Ms. Sanford reviewed the audit on June 2, 1998 and found significant problems with finances and delivery operations. She indicated that appellant used the excuse of lack of training and continually attempted to compare operations at her office with others in her region. Ms. Sanford stated that such comparisons could not be fairly made and that, in terms of automation, appellant's office was equipped with machinery, which should have allowed her manage her workload more efficiently.

Ms. Sanford stated that she extended appellant's 1998 rating period by three months to allow her to reduce the amount of funds in suspense. However, appellant did not correct the situation and thus received an unacceptable rating. She also indicated that appellant was issued a letter of demand for funds in accordance with the employing establishment's accounting procedures, although a judge later determined that she should not be made to pay the funds. Ms. Sanford added that she disagreed with appellant's allegations that she had been required to submit documentation that other postmasters were not required to submit. Ms. Sanford attached office guidelines, which outlined that all postmasters should submit such documentation. She indicated that she had in fact visited appellant's office several times, contrary to allegations made by appellant.

Ms. Sanford further indicated that appellant was issued a proposed letter of warning because she exchanged personal funds with another employee in violation of an ethics regulation. However, the letter was rescinded after the agency decided that only employees having a supervisor/subordinate relationship should receive discipline in that situation. She further indicated that the decision to transfer appellant to a lower level office with less responsibilities was reasonable given the financial discrepancies found in her budget and her proven inefficient management.

The employing establishment also submitted a letter outlining the Starkville office audit of trust funds, stock credit records and purchase order logs, which noted that internal controls were inadequate and revenues were not properly collected and controlled. A representative of the employing establishment asserted that the financial review was submitted to verify that various unbalanced accounts and discrepancies were found in appellant's management of her previous office.

In a letter dated December 17, 1999, the Office listed nine allegations made by appellant of acts of retaliation, harassment and discrimination by the employing establishment and advised her which ones were not in the performance of duty and which ones required corroborating evidence.

By decision dated January 19, 2000, the Office denied appellant's claim on the grounds that she failed to identify any compensable factors of employment. In a letter received by the Office on February 4, 2000, appellant requested reconsideration of the prior decision and submitted a medical report dated January 17, 2000 from Dr. Margaret Cassada, her treating psychiatrist.

By decision dated March 7, 2000, the Office denied appellant's request on the grounds that she did not raise pertinent new issues or provide new and relevant evidence necessary to establish a compensable factor of employment.

The Board finds that appellant failed to establish that she sustained an emotional condition while in the performance of duty.

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.¹ On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or her frustration from not being permitted to work in a particular environment or to hold a particular position.²

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which she claims compensation was caused or adversely affected by employment factors.³ This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.⁴

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.⁵ If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of

¹ 5 U.S.C. §§ 8101-8193.

² See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

³ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

⁴ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

⁵ See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.⁶

Appellant alleged that her emotional condition was due to unfair treatment at her workplace and the anxiety of being transferred. To the extent that disputes and incidents alleged as constituting discrimination by supervisors and coworkers are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors.⁷ However, for harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable under the Act.⁸

In this case, appellant has not submitted sufficient evidence to establish that the employing establishment discriminated against her in auditing her office. The record establishes that the employing establishment conducted audits of all its offices in her area. Although the results specifically reflected the poor business practices of appellant, there is no evidence fails to establish that she was maligned or that her privacy was violated in the process.

Moreover, appellant has not established that she was discriminated against because she received a proposed letter of warning, an office budget reduction or an unacceptable merit rating for fiscal year 1998. The employing establishment indicated that the proposed warning was due to an ethical violation, but was never formally issued. Appellant's unacceptable merit rating and budget cut resulted from her poor performance, as evidenced by the office audit. Appellant has offered no evidence that she received a preliminary reprimand, budget cut and unacceptable rating because of her age, ethnicity or gender.

Further, appellant has not established her allegations that her supervisor required that she submit documentation not requested from other postmasters and that her supervisor never observed operations at her office. Ms. Sanford, appellant's supervisor, specifically refuted these claims. She stated that she had visited the Starkville office on various occasions and observed operations and that all postmasters, as evidenced a statement of office procedures in the record, were required to submit the paperwork requested of appellant.

Finally, appellant has not established that she was discriminated against when transferred to another post office. The record establishes that the employing establishment, in its effort to address issues of inefficiency and inadequate management of the Starkville office, determined that appellant would be better suited to a smaller office with less responsibility. The Board has previously stated that an employee's fear of a reduction-in-force or her frustration from not being permitted to work in a particular environment or to hold a particular position is not a compensable employment factor under the Act.

⁶ *Id.*

⁷ *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

⁸ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

Appellant's allegations that she was improperly held liable for business losses sustained while she served as postmaster at the Starkville office relates to administrative or personnel matters.⁹ Unless there is evidence of error or abuse on the part of the employing establishment, administrative or personnel matters will not constitute compensable employment factors.¹⁰

The record establishes that, following the unfavorable results of the Starkville audit conducted on delivery operations, the employing establishment issued a letter demanding repayment of the losses pursuant to an office accounting procedure in the employee handbook. The employing establishment noted that under certain circumstances, postmasters and managers could be charged in full for business losses. The record establishes that a hearing was held on the issue and the demanded amount was charged off, following a decision that appellant should not be made to pay the loss. There is no evidence of error or abuse in this administrative matter.

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty.¹¹

The Board further finds that the Office acted within its discretion in refusing to reopen appellant's claim for further consideration of the merits.

Under section 8128(a) of the Act, the Office has the discretion to reopen a case for review on the merits. The Office must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations,¹² which provides that a claimant may obtain review of the merits of the claim by:

“(i) Showing that the Office erroneously applied or interpreted a specific point of law, or

“(ii) Advancing a relevant legal argument not previously considered by the Office, or

“(iii) Constituting relevant and pertinent new evidence not previously considered by the Office.” Section 10.608(b) provides that any application for review of the merits of the claim which fails to meet at least one of the standards described in section 10.606(b)(2) will be denied by the Office without reopening the case for a review of the merits.¹³

⁹ *James W. Griffin*, 45 ECAB 774 (1994).

¹⁰ *Id.*

¹¹ As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; *see Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

¹² 20 C.F.R. § 10.606(b)(2) (1999).

¹³ 20 C.F.R. § 10.608(b) (1999).

In this case, appellant submitted previously submitted information, along with medical reports and personnel information including various emails, a merit evaluation and correspondence pertaining to appellant's proposed letter of warning. The evidence submitted irrelevant for the purposes of establishing a compensable factor of employment, the material issue in this case.

Appellant submitted no new relevant and pertinent evidence in support of her February 4, 2000 request for reconsideration, nor did appellant show that the Office erroneously applied or interpreted a point of law. Accordingly, the Office properly denied appellant's request for review on the merits.

The decisions of the Office of Workers' Compensation Programs dated March 7 and January 19, 2000 are hereby affirmed.

Dated, Washington, DC
November 13, 2001

David S. Gerson
Member

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member